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1	A bill to be entitled
2	An act relating to environmental permitting; amending s.
3	373.414, F.S.; limiting local government authority to
4	prohibit mitigation of certain wetlands activities;
5	prohibiting certain local government resource permitting
6	in the Northwest Florida Water Management District;
7	reenacting and amending s. 373.4145, F.S.; requiring the
8	district and the Department of Environmental Protection to
9	jointly develop rules for the regulation of certain
10	activities related to stormwater management systems and
11	the management and storage of surface waters; requiring
12	the district and the department to streamline federal and
13	state wetland permitting programs and to implement such
14	measures; requiring certain exemptions and provisions for
15	rules relating to certain dwellings; requiring the
16	department and district to incorporate certain exemptions
17	and general permits in joint rules; exempting certain
18	activities and structures from permitting requirements;
19	requiring the department and the district to enter into an
20	operating agreement for the implementation of certain
21	provisions; requiring the district to be responsible for
22	the regulation and local delegation of certain activities;
23	providing for continuing operation of certain earlier law;
24	repealing certain provisions upon the adoption of rules;
25	providing effect for failure to fund in any given fiscal
26	year; providing an appropriation for operational expenses
27	of the district; repealing s. 4 of ch. 2005-273, Laws of
28	Florida, and s. 32 of ch. 2005-71, Laws of Florida, which
29	specified dates certain for the repeal of certain

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provisions relating to permitting in the district;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section
373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface
waters and wetlands.--

(1) As part of an applicant's demonstration that an
activity regulated under this part will not be harmful to the
water resources or will not be inconsistent with the overall
objectives of the district, the governing board or the department
shall require the applicant to provide reasonable assurance that
state water quality standards applicable to waters as defined in
s. 403.031(13) will not be violated and reasonable assurance that
such activity in, on, or over surface waters or wetlands, as
delineated in s. 373.421(1), is not contrary to the public
interest. However, if such an activity significantly degrades or
is within an Outstanding Florida Water, as provided by department
rule, the applicant must provide reasonable assurance that the
proposed activity will be clearly in the public interest.

(b) If the applicant is unable to otherwise meet the
criteria set forth in this subsection, the governing board or the
department, in deciding to grant or deny a permit, shall consider
measures proposed by or acceptable to the applicant to mitigate
adverse effects that may be caused by the regulated activity.
Local governments may not adopt or enforce ordinances,
resolutions, regulations, or policies that prohibit or restrict

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mitigation that offsets wetland construction impacts pursuant to this part. Any local government ordinance or regulation intended to regulate construction in wetlands or surface waters shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It shall be the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity. Local governments within the geographical jurisdiction of the Northwest Florida Water Management District shall not adopt or enforce wetland regulatory programs or criteria more stringent than or duplicative of the environmental resource permitting program enacted pursuant to s. 373.4145(1).

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, the provisions of this subsection shall not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department

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or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation shall be given only to the extent that the donation covers the full cost to the agency of undertaking the project that is intended to mitigate the adverse impacts. However, nothing herein shall be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section shall be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.

2. The department and each water management district shall report by March 1 of each year, as part of the consolidated

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annual report required by s. 373.036(7), all cash donations accepted under subparagraph 1. during the preceding water management district fiscal year for wetland mitigation purposes. The report shall exclude those contributions pursuant to s. 373.4137. The report shall include a description of the endorsed mitigation projects and, except for projects governed by s. 373.4135(6), shall address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

Section 2. Section 373.4145, Florida Statutes, is reenacted and amended to read:

373.4145 ~~Interim~~ Part IV permitting program within the geographical jurisdiction of ~~for~~ the Northwest Florida Water Management District.--

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146 (1) Within the geographical jurisdiction of the Northwest
147 Florida Water Management District, taking into consideration the
148 differing physical and natural characteristics of the area, the
149 department and the district shall ~~the permitting authority of the~~
150 ~~department under this part shall consist solely of the following,~~
151 ~~notwithstanding the rule adoption deadline in s. 373.414(9):~~

152 (a) Jointly develop rules to regulate the construction,
153 operation, alteration, maintenance, abandonment, and removal of
154 stormwater management systems. The department shall apply and
155 enforce the rules no later than January 1, 2007, but may adopt
156 and implement them prior to that date pursuant to s. 120.54.
157 Until the stormwater management system rules take effect, chapter
158 62-25 17-25, Florida Administrative Code, shall remain in full
159 force and effect, and shall be implemented by the department.
160 Notwithstanding the provisions of this section, chapter 62-25 17-
161 25, Florida Administrative Code, may be amended by the department
162 as necessary to comply with any requirements of state or federal
163 laws or regulations, or any condition imposed by a federal
164 program, or as a requirement for receipt of federal grant funds.
165 The intent of the rules created under this paragraph is to update
166 existing stormwater rules, to improve water quality and water
167 quality protection, and to apply the least restrictive measures
168 and criteria adopted in other water management district rules.

169 (b) Jointly develop rules for the management and storage of
170 surface waters under this part. The department shall apply and
171 enforce the rules no later than January 1, 2007, but may adopt
172 and implement them prior to that date pursuant to s. 120.54.
173 Until the rules for the management and storage of surface waters
174 under this part take effect, rules adopted pursuant to the

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authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect, and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code, shall be determined in accordance with the methodology in rules 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~, Florida Administrative Code, ~~as ratified in s. 373.4211, upon the effective date of such ratified methodology.~~ In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands that ~~which~~ can be delineated by the methodology ratified in s. 373.4211, but that ~~which~~ are not subject to the regulatory authority of the department as described in this paragraph. The intent of the rules created under this paragraph is to improve the management and storage of surface waters with minimal impact on property interests and to consider the rural nature of the district relative to the permitting thresholds and requirements.

(c) Pursue streamlining of the federal and state wetland permitting programs pursuant to ss. 373.4143 and 373.4144.

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(d) Implement, to the maximum extent possible, streamlining measures, including electronic permitting, field permitting, and certification programs for activities with minimal individual or cumulative impact, informal wetland determinations, and other similar measures.

(2)~~(e)~~ The department may implement chapter 40A-4, Florida Administrative Code, in effect prior to July 1, 1994, pursuant to an interagency agreement with the Northwest Florida Water Management District adopted under s. 373.046(4).

(3) The rules adopted under subsection (1), as applicable, shall:

(a) Incorporate the exemptions in ss. 373.406 and 403.813(2).

(b) Incorporate the provisions of rule 62-341.475(1)(f), Florida Administrative Code, applicable to single-family homes located entirely or partially within wholly owned, isolated wetlands.

(c) Exempt from the notice and permitting requirements of this part the construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale proposed by the applicant.

2. Does not involve wetlands or other surface waters.

(d) Incorporate the exemptions and general permits that have been enacted by rule under s. 373.414(9) by the department and other water management districts and the general permits authorized by s. 403.814.

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231 (e) Exempt from permitting requirements activities and
232 structures that are exempt from permitting in any other water
233 management district.

234 (f) Exempt from permitting requirements the resurfacing or
235 paving of unpaved roads.

236 (g) Exempt from permitting requirements the alteration of
237 wholly owned, artificially created surface waters that do not
238 connect to any waters of the state.

239 ~~(2) The authority of the Northwest Florida Water Management~~
240 ~~District to implement this part or to implement any authority~~
241 ~~pursuant to delegation by the department shall not be affected by~~
242 ~~this section. The rule adoption deadline in s. 373.414(9) shall~~
243 ~~not apply to said district.~~

244 ~~(4)(3) The department and the division of permitting~~
245 ~~responsibilities in s. 373.046(4) shall not apply within the~~
246 ~~geographical jurisdiction of the Northwest Florida Water~~
247 ~~Management District shall enter into an operating agreement under~~
248 ~~s. 373.046 to effectively implement this section and provide the~~
249 ~~district with the amount of responsibility under the agreement~~
250 ~~that resources allow, including, at a minimum, the responsibility~~
251 ~~for regulating silviculture and agriculture. The operating~~
252 ~~agreement shall encourage local delegation of the~~
253 ~~responsibilities under this section pursuant to s. 373.441.~~

254 (5) The provisions of s. 373.414(11)-(14) shall not apply
255 to rules adopted under this section.

256 (6) The following activities shall continue to be governed
257 by the provisions of s. 373.4145, Florida Statutes 1994:

258 (a) The operation and routine custodial maintenance of
259 activities legally in existence before the effective date of the

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rules adopted under subsection (1), as long as the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met.

(b) The activities approved in a permit issued pursuant to s. 373.4145, Florida Statutes 1994, and the review of activities proposed in applications received before the effective date of the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, Florida Statutes 1994, that lessens the environmental impact, except that any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(7) Unless the petitioner elects to apply rule 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rule 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

~~(4) If the United States Environmental Protection Agency approves an assumption of the federal program to regulate the discharge of dredged or fill material by the department or the water management districts, or both, pursuant to s. 404 of the~~

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289 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
 290 ~~1251 et seq., the United States Army Corps of Engineers issues~~
 291 ~~one or more state programmatic general permits under the~~
 292 ~~referenced statutes; or the United States Environmental~~
 293 ~~Protection Agency or the United States Corps of Engineers~~
 294 ~~approves any other delegation of regulatory authority under the~~
 295 ~~referenced statutes, then the department may implement any~~
 296 ~~permitting authority granted in this part within the Northwest~~
 297 ~~Florida Water Management District which is prescribed as a~~
 298 ~~condition of granting such assumption, general permit, or~~
 299 ~~delegation.~~

300 ~~(8)(5)~~ Within the geographical jurisdiction of the
 301 Northwest Florida Water Management District, the methodology for
 302 determining the landward extent of surface waters of the state
 303 under chapter 403 in effect prior to the effective date of the
 304 methodology ratified in s. 373.4211 shall apply to:

305 (a) Activities permitted under the rules adopted pursuant
 306 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
 307 1983, as amended, or that ~~which~~ were exempted from regulation
 308 under such rules, prior to July 1, 1994, and that ~~which~~ were
 309 permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code,
 310 or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code,
 311 prior to July 1, 1994, provided:

312 1. An activity authorized by such permits is conducted in
 313 accordance with the plans, terms, and conditions of such permits.

314 2. An activity exempted from the permitting requirements of
 315 the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement
 316 to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~,
 317 Florida Administrative Code, is:

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a. Commenced prior to July 1, 1994, and completed by July 1, 1999;

b. Conducted in accordance with a plan depicting the activity that ~~which~~ has been submitted to and approved for construction by the department, the appropriate local government, the United States Army Corps of Engineers, or the Northwest Florida Water Management District; and

c. Conducted in accordance with the terms of the exemption.

(b) An activity within the boundaries of a valid jurisdictional declaratory statement issued pursuant to s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or the rules adopted thereunder, in response to a petition received prior to June 1, 1994.

(c) Any modification of a permitted or exempt activity as described in paragraph (a) that ~~which~~ does not constitute a substantial modification or that ~~which~~ lessens the environmental impact of such permitted or exempt activity. For the purposes of this section, a substantial modification is one that ~~which~~ is reasonably expected to lead to substantially different environmental impacts.

(d) Applications for activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, that ~~which~~ were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

(9) Subsections (2) and (8) are repealed on the effective date of the rules adopted under subsection (1).

(10) In the event that the Legislature in any given fiscal year fails to fund and staff the environmental resource

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permitting program established under this section, the
environmental resource permitting program shall be suspended for
that fiscal year and the rules and statutes governing development
activity in the district shall revert to those in effect on April
1, 2006, until such time as funding and staffing levels are
restored consistent with this section.

~~(6) Subsections (1), (2), (3), and (4) shall be repealed~~
~~effective July 1, 2006.~~

Section 3. The sum of \$2,740,000 is appropriated from the
Water Management Lands Trust Fund to the Department of
Environmental Protection for the 2006-2007 fiscal year for the
operational expenditures of the Northwest Florida Water
Management District pursuant to s. 373.4145, Florida Statutes, as
amended by this act.

Section 4. Section 4 of chapter 2005-273, Laws of Florida,
and section 32 of chapter 2005-71, Laws of Florida, are repealed.

Section 5. This act shall take effect July 1, 2006.